

RESOLUTION NO. 74787

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO NEGOTIATE AND EXECUTE A FIRST AMENDMENT TO THE TURNKEY PARKLAND AGREEMENT WITH HITACHI GLOBAL STORAGE TECHNOLOGIES, INC. TO ACCEPT AN ADDITIONAL WARRANTY WITH CERTAIN TERMS AND CONDITIONS FOR THE SPORT COURT SURFACES INSTALLED AT THE PARK SITES THAT VARIED FROM CITY APPROVED PLANS AND SPECIFICATIONS

WHEREAS, in 2003, Hitachi Ltd. ("Hitachi") acquired the IBM hard disk drive business, which included the 332-acre IBM Campus located at 5600 Cottle Road; and

WHEREAS, in June, 2005, the Council of the City of San José ("City Council") unanimously approved Hitachi's application for planned development zoning of the IBM Campus, and in June, 2008, the City Council approved the turnkey, environmental and maintenance agreements with Hitachi for the construction of three public park sites; and

WHEREAS, the three public park sites, include a 10.6-acre community park, 5.37-acre neighborhood park and a 1-acre neighborhood park facility with basketball courts, tennis courts, bocce ball courts and various other play and fitness areas; and

WHEREAS, as part of the turnkey agreement, the parks were to be designed and constructed in accordance with the City of San José's ("City") Standard Specifications and Standard Details dated July 1992, City's Turnkey Park Standards for Park Design & Construction dated 2001, and plans and project specifications submitted by Hitachi and approved by City for the three parks (collectively, the "Plans"); and

WHEREAS, the City materials testing results in November, 2008, indicated that the materials for the asphalt concrete surfacing of two basketball courts and one tennis court had failed the stability requirements of the Plans; and

WHEREAS, City has evaluated the materials used for the surfacing and will accept the installed materials in the current condition if Hitachi provides an additional three year warranty for the materials and workmanship of the asphalt concrete up to \$50,000 in value, and agrees to repair defects identified during the warranty period; and

WHEREAS, the City desires to negotiate and execute a First Amendment to the Turnkey Parkland Agreement for Tentative Map No. PT 05-108 with Hitachi Global Storage Technologies, Inc. to accept an additional warranty for the sport court surfaces installed that varied from the Plans;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

The City Manager, or designee, is hereby authorized to negotiate and execute a First Amendment to the Turnkey Parkland Agreement for Tentative Map No. PT 05-108 with Hitachi Global Storage Technologies, Inc. to accept an additional warranty with certain terms and conditions for the sport court surfaces that were installed in the 10.6-acre and 5.37-acre parks that varied from the City approved plans and specifications.

ADOPTED this 10th day of February, 2009, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE, REED.

NOES: NONE.

ABSENT: CHIRCO.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk